IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1821 OF 2006

1. Renuka Durgappa Kamble,)
Age 25 years, R/o.Madhol,)
Tal.& Dist. Bagalkot.)

2. Mina Irappa Kamble,)
Age 30 years, R/o.Madhol,)
Tal.& Dist. Bagalkot.)

3. Reshma Jayappa Dasrkiri,)
Age 30 years, R/0. Near)
Golghumat, Vijapur,)
Dist. Vijapur.)

4. Sunita Sharada Kamble,)
Age 31 years, R/0. Madhol,)
Tal.& Dist. Bagalkot,)
At present R/o.Yadavnagar)
Zopadpatti, Kolhapur.)

5. Puja Yalappa Kambel,)
Age 25 years, R/o.Near)
Saisab Temple, Mudhol,)
Tal & Dist. Bagalkot,)
At present r/o.Yadavnagar)
Zopadpatti, Kolhapur.)

6. Nagina Basha Banu,)
Age 22 years, R/o.Shivaji-)
Nagar, Tarabai Main Road,)
Door No.22, Mangalore.)

7. Chandani Akbar Pathan,)
Age 21 years, R/o. Canyroad,)
Zopadpatti, Bangalore.)

8. Usha Nashmanna Sayyad,)
Age 20 years, R/o.Mandanpalli,)
Ishwarkali, Dist. Chittur.)

9. Shanti Shankar Swami,)
Age 25 years, R/o.CIDCO Nagar,)
Taluka Anantpur, Dist.AndhraPradesh)

10. Rani Abarao Vadda,)

Age 28 years, R/o.Samunnagar,)
Dist. Vijaywada, AndhraPradesh.)

11. Puja Anand Patel,)
Age 25 years, R/o.Shivaji-)
Nagar, AndhraPradesh.)
At present R/o.Gokul-Shrigaon,)
Kolhapur.)

12. Asha Akbar Shaikh,)
Age 23 years, R/o.Padmaner)
Guddi Mattam Road,)
Tamil Nadu.)

13. Shipla Sanjay Nayar,)
Age 22 years, R/o.Yashwantpur,)
Near Ramayya College,)
Bangalore.)

14. Tara Amin,)
Age 20 years, R/o.Near Akbar,)
Mashid, Mysore.)

15. Jyoti Naidu Sundannavar,)
Age 30 years, R/o.Gajwaka,)
Dist. Vishakhapattnam,)
Andhra Pradesh.)

16. Anjali Rehman Shaikh,)
Age 22 years, R/o.Badamakan,)
Mysore, Karnataka.)

17. Rehna Abdul Shaikh,)
Age 23 years, R/o. Bandra(W),)
Chawl No.1, Zopadpatti,)
Mumbai.)

18. Najma Abbakka Shaikh,)
Age 23 years, R/o.Bandra(W),)
Chawl No.3, Zopadpatti,)
Mumbai.)

19. Rubina Ashraf Shaikh,)
Age 22 years, R/o.Bandra(W),)
Chawl No.5, Zopadpatti,)
Mumbai.)

20. Sangita Jaysingh Jadhav,)
Age 25 years, R/o.Kannan)

Nagar Zopadpatti, Kolhapur.)

21. Sita Dilip Das,)
Age 20 years, R/o.Viranod,)
Dist. Nodiya, Kolkata.)

22. Anita Abul Bises,)
Age 22 years, R/o.Gopalnagar,)
Kolkata.)

23. Sapana Narayan Bhosale,)
Age 25 years, R/o.Bhosale)
Chowk, Barshi, Dist. Solapur.)

24. Reshma Babu Shaikh,)
Age 21 years, R/at Near S.T.)
Stand, Hubli, Dist. Hubli.)

25. Madhuri Bhimsingh Kamble,)
Age 25 years,)
R/o.Malingpur Side, Mudhol,)
Tal. & Dist. Bagalkot.)

26. Laxmi Sagappa Kamble,)
Age 25 years, R/at Near S.T.)
Stand, Tal. Jamkhandi,)
Dist. Bagalkot.)

27. Hanmanti Nagappa Nidvike,)
Age 40 years, R/at Balingpura,)
Lake, Tal.Jamkhandi,)
Dist. Bagalkot.)

28. Rekha Vyankappa Kamble,)
Age 30 years, R/o. Vijapur Road,)
Tal.Jamkhandi, Dist. Bagalkot.)

29. Shipla Hanmanta Kumbhar,)
Age 25 years, R/at Zopadpatti)
behind S.T.stand, Dist.Vijapur.)

30. Sangita Satish Kamble,)
Age 25 years, R/at Gavalgalli,)
Jamkhandi, Dist.Bagalkot.)

31. Swapna Bapu Pujari,)
Age 24 years, R/at Gandhi Chowk,)
Vijapur, Dist. Vijapur.)

32. Renuka Tanaji Patil,)
Age 23 years, R/at Baswan)
Bagewadi, Dist. Vijapur.)

33. Poonam Yallappa Kamble,)
Age 19 years, R/o.Bhalam Nagar,)
Mudhol, Tal.& Dist.Bagalkot.)

Occupation of all 1 to 33 is)
labourer.)

At present all are detained)
at Navjeevan Mahila VastiGriha,)
Mumbai.)...Petitioners

Versus

The State of Maharashtra)...Respondent

Shri S.A. Ingawle for the Petitioners.

Shri A.S. Shitole, A.P.P for the Respondent.

CORAM : ABHAY S. OKA, J.

DATE : OCTOBER 18, 2006.

JUDGMENT:

1. On the last date this Writ Petition was heard finally. With a view to appreciate the submissions made by the learned counsel appearing for the parties, it will be necessary to refer to the facts of the case in brief. It appears that the Inspector of Police, Local Crime Branch, Kolhapur conducted raid on 07th May, 2006 at 15.35 hours at a place opposite Mayur Petrol Pump, Gokul-Shirgaon, Pune-Banglore Highway,

Kolhapur. The allegation of the police is that at the time of raid it was found that the said premises was being used as a brothel. An offence was registered under sections 3, 4, 5 and 6 of the Immoral Traffic (Prevention) Act, 1956 (hereinafter referred to as the said Act of 1956). The offence was registered against one Kamalabai Waghmare and four others. At the time of raid, 33 women were found who were allegedly indulging in prostitution. On 07th May, 2006 the said 33 victims were sent to Tejasvini Mahila Sudhargriha, Sambhaji Nagar, Kolhapur. An Application was made on behalf of said victims on 16th May, 2006 before the learned Judicial Magistrate (First Class), Kolhapur for release. It appears that on 09th May, 2006 the learned Judicial Magistrate called for the report of the District Probation Officer. On 16th May, 2006 the learned Judge directed that the said victims may be medically examined and a report be submitted. Accordingly, a report was submitted and it was found that none of them were suffering from any disease.

2. On 23rd May, 2006 the learned Judicial Magistrate passed an order directing that the said 33 victims be detained in Navjeevan Mahila Vasatigriha, Chembur, Mumbai for a period of one year from 23rd

May, 2006. Separate Appeals were preferred against the said order by the said 33 victims before the Sessions Court. The said Appeals have been dismissed by order dated 10th July, 2006. The orders dated 23rd May, 2006 and 10th July, 2006 are challenged in this Petition under Article 227 of the Constitution of India. The Petition is filed by the said 33 victims.

3. The learned Advocate appearing for the Petitioner invited my attention to the report of the District Probation Officer and the findings recorded by the courts. He pointed out that mandatory procedural requirements of the said Act of 1956 were not complied with. He submitted that report of the Probation Officer shows that the entire approach of the officer was erroneous and he has treated the victims of the offence as accused persons. He submitted that as there is non-compliance with statutory requirements, the order of detaining the victims in Navjeevan Mahila Vasatigriha is illegal and deserves to be quashed and set aside.

4. The learned A.P.P has opposed the Petition by pointing out that order of detaining the victims in Navjeevan Mahila Vasatigriha has been passed in the

interests of the victims with the object of keeping them away from evil influences. He submitted that the said victims were found indulging in prostitution. Today he has tendered an affidavit of District Probation Officer who was at the relevant time posted at Kolhapur. He has given explanation in the affidavit that the victim girls are from poor families and their parents are depending on them and therefore, if the victims are set free, they may again be forced to do prostitution. He has tendered apology in case there is any lacuna in the report. There is an affidavit of Investigating Officer tendered today in which apprehension is expressed that if the victims are released they will indulge in prostitution.

5. With a view to appreciate the aforesaid submissions, it will be necessary to refer to the relevant provisions of said Act of 1956. Section 15 empowers a Special Police Officer or Trafficking Police Officer to search a premises when there are reasonable grounds for believing that an offence punishable under the said Act of 1956 has been or is being committed in respect of person living in any premises. Sub-section 4 of section 15 provides that the Special Police Officer or the trafficing police

offier, as the case may be, entering the premises shall be entitled to remove therefrom all the persons found therein. Sub-section 5 of section 15 mandates that the officer concerned after removing a person in accordance with sub-section 4 shall forthwith produce him before the appropriate Magistrate. Section 16(1) gives a power to the learned Magistrate to order removal of a person who is living, or is carrying on or is being made to carry on prostitution in a brothel.

6. Section 17(1) provides that when the Special Police Officer removing a person under sub-section 4 of Section 15 is for any reason unable to produce the person before the appropriate Magistrate as required by mandatory provisions of sub-section 5 of section 15, he shall forthwith produce him before the nearest Magistrate of any Class. Such Magistrate is empowered to pass order for safe custody of the person until he is produced before the appropriate Magistrate. When said person is produced before the appropriate Magistrate, sub-section 2 of section 17 requires the Magistrate to cause an inquiry to be made as regards age, character and antecedents of the person and the suitability of his parents, guardian or husband for

taking charge of him and the nature of the influence which the conditions in his home are likely to have. For this purpose, appropriate Magistrate may direct a probation officer to inquire into circumstances and into the personality of the person concerned and the prospects of rehabilitation. Sub-section 3 provides that to enable an inquiry to be made, the person can be ordered to be kept in safe custody. The proviso lays down that no person shall be kept in custody for this purpose for a period of exceeding three weeks from the date of the said order and no person shall be kept in the custody of a person likely to have harmful influence over him. Sub-section 4 of section 17 provides that when the Magistrate after making inquiry as required by sub-section 2 is satisfied that the information received is correct and the person is in need of care and protection, he may subject to the provisions of sub-section 5 make an order that the person shall be detained for such period, being not less than one year and not more than three years, as may be specified in the order, in a protective home, or in such other custody as he shall, for reasons to be recorded in writing, consider suitable.

7. I have perused the record of the case. On

08th may, 2006 a remand report was submitted by the Assistant Police Inspector of Local Crime Branch, Kolhapur stating therein about the raid conducted on 07th May, 2006. The report also discloses that 33 victims have been sent to Tejaswini Mahila Sudhargriha. Sub-section 5 of section 15 provides that the Special Police Officer or the Trafficking Police Officer, as the case may be, after removing the person under sub-section 4 shall forthwith produce him before the appropriate Magistrate. It is obvious that compliance with the said mandatory requirement was not made by immediately producing the victims before the appropriate Magistrate. Law takes care of a contingency where the appropriate Magistrate is not available immediately by providing that when for any reason the person cannot be produced before the appropriate Magistrate, he must be forthwith produced before the nearest Magistrate who shall pass such order as he deems proper for safe custody of the person until the person concerned is produced before the appropriate Magistrate. Under sub-section 3 of section 17, appropriate Magistrate has to pass an order as he deems proper for safe custody of the person till the conclusion of the inquiry under sub-section 2 of section 17 of the said Act of 1956.

The remand report dated 08th may, 2006 submitted by the Assistant Inspector does not disclose that the victims were produced before the Magistrate atleast on 08th May, 2006. The learned Magistrate has passed an order on the said report. Even the said order does not record that the victims were produced on 08th May, 2006 before the learned Magistrate. At Exhibit 6 there is a separate report dated 08th May, 2006 submitted by the Assistant Police Inspector. In the said report, it is stated that the 33 victims who are named in the said report have been kept in Tejasvini Mahila Sudhargriha. A request was made in the said report to grant approval for detaining the said victims in the said Tejasvini Mahila Sudhargriha. Only order passed on the said report on 08th May, 2006 is "put-up on 09th May, 2006 before regular Presiding Officer". It is thus obvious that no direction was given by the learned Magistrate on 08th may, 2006 for keeping the victims in safe custody. On 09th May, 2006 following order was passed by the learned Magistrate:

> "1. It seems from the report that victims in C.R.No.37 of 2006 registered at Karvir Police Station are at present kept at

Tejaswini Mahila Sudhargriha, Sambhajinagar, Kolhapur. All the victims are produced before me. It appears from report that all the victims are above 18 years age. Investigating Officer is present before the Court.

. As per sub section 5-A of section 15 of the Immoral Traffic (Prevention) Act, 1956, it is necessary that these victims should be referred for medical examination to registered Medical Practioner to determine the age or detection of any injuries as a result of sexual abuse or the presence of any sexually transmitted disease. Therefore, these victims be referred to Medical Officer, C.P.R.Hospital for their examination as per section 15 sub section 5-A of Immoral Traffic (Prevention) Act, 1956.

2. Heard both sides. I find it is just and proper to call the report of the probation officer as per section 17(2) of Immoral Traffic (Prevention)Act, 1956. The District Probation Officer is hereby directed to inquire about age, character and antecedents

> of the victims and the suitability of their parents, guardian or husband for taking charge of them and the nature of influence which the conditions in their home are likely to have on them, if they are sent to home."

Perusal of the said order shows that there is no application of mind by the learned Magistrate as regards necessity or requirement of keeping the victims in safe custody. In fact, the learned Magistrate passed an order under sub-section 2 of section 17 calling for the report from the District Probation Officer. However, he did not pass any order under sub-section 3 of section 17 of the said Act of 1956. Such order ought to have been passed for a maximum period of three weeks pending the completion of inquiry under sub-section (2) of section 17. It is clear from the report dated 08th May, 2006, and the record of the case that the victims were not produced before the Magistrate till 09th May, 2006. As pointed out earlier, the only order passed by the learned Magistrate on report dated 08th May, 2006 is "put-up the report before the regular Presiding Officer on 09th May, 2006". On 09th May, 2006 an Application was made by the District Women and Child Development

Officer, Kolhapur seeking order for transferring the victims from Kolhapur to Navjeevan Vastigriha, Mumbai. The learned Magistrate passed an order on the said Application "Investigating Officer to say". A separate order passed on the same day records that the victims were produced before the learned Magistrate. The learned Magistrate directed that the said report be kept for orders after receiving the report of the Probation Officer. Thus, for the first time, the victims were produced before the learned Magistrate on 09th May, 2006 when admittedly the Police Officer had removed the victims from the brothel on 07th May, 2006 at 9.25 p.m and had immediately detained them in the Tejaswini Mahila Sudhargriha. As stated earlier, there is no order passed either under sub-section 1 of section 17 or under sub-section 3 of section 17 for detaining the victims in the safe custody. The order of detaining the victims in safe custody for one year was passed for the first time on 23rd May, 2006 and that also under sub-section 4 of section 17. The detention of the victims/Petitioners in Tejaswinig Mahila Sudhargriha was completely unauthorised and illegal. Even the mandatory requirement of production of victims before the Magistrate immediately after action is taken under sub-section 5 of section 15 was

not complied with. Thus, the detention of the victims from 07th may, 2006 was completely illegal. The learned Magistrate gets jurisdiction to pass orders under sub-section 4 of section 17 only when there is compliance with mandatory requirements of sub-section (5) of section 15 and sub-section 1, 2 and 3 of section 17. The unauthorised detention of the victims from 07th May, 2006 onwards cannot be legalised by the further order under sub-section 4 of section 17 passed on 23rd May, 2006.

8. It will be also necessary to refer to the reports submitted by the District Probation Officer. Sub-section 2 of section 17 contemplates an inquiry as regards age, character, antecedents of the person and suitability of her parents. The Probation Officer is required to inquire into the aforesaid circumstances and into personality of the person concerned and the prospects of rehabilitation. The reports are submitted by the District Probation Officer by using the format prescribed for an inquiry under the Probation of Offenders Act, 1958. In each and every report, every victim is described by the District Probation Officer as an accused. It is obvious that the inquiry is made by the treating the victims as

accused. Even the police officer concerned in his reports had not described the victims as accused. The reports of the District Probation Officer clearly show that the entire approach of the District Probation Officer was completely erroneous. The reports of the District Probation Officer show that he was ignorant about the difference between an accused who has committed offences under the said Act of 1956 and the victims of the offence. The order dated 23rd May, 2006 passed by the learned Magistrate based on such reports cannot be upheld.

9. The learned Magistrate while passing the order dated 23rd May, 2006 has pointed out that some of the victims are "devdasis". There is no consideration by the learned Judge of the factors which are to be required to be considered as provided by the sub-section 2 of section 17. The learned Magistrate without discussing the requirements of sub-section 2 of section 17 has proceeded to pass order of detention for a period of one year. In Appeal the learned Adhoc Additional Sessions Judge has noted that the procedure as required by section 15 was not followed. However,

p the learned Judge has not at all considered the

effect
of failure of the learned Magistrate to pass order under sub-section 3 of section 17.

10. The courts below have completely ignored the fact that though victims might have been be forced by the circumstances to indulge in prostitution, the victims are entitled all the rights which are available under the constitution of India to any ordinary citizen. The fact they were unauthorizedly detained from 07th May, 2006 onwards was completely ignored by the courts below.

11. The said illegality cannot be cured. A very shocking aspect of the case is that from 07th May, 2006 till 09th May, 2006 the victim were not at all produced before the learned Magistrate and the learned Magistrate never authorised detention of the said victims from 07th May, 2006 onwards.

12. It is for the State Government to ensure that proper format is made available to the District Probation Officers while they perform their duty under sub-section 2 of section 17 so that attention of the District Probation Officer will be focused on the

requirements of inquiry under sub-section 2 of section 17.

13. The law must take its own course and the impugned orders will have to be set aside as being illegal.

14. Hence, I pass the following order:

(i) The impugned Judgments and Orders are quashed and set aside.

(ii) The Petitioners who are detained in the Navejeevan Mahila Vastigriha, Mumbai, shall be released forthwith unless they are required in connection with any other offence/case.

JUDGE